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7 UNITED STATES BANKRUPTCY COURT

8 EASTERN DISTRICT OF WASHINGTON

9 In re: ) Case No. 18-03197-FPC11  
10 GIGA WATT INC, )  
11 Debtor. ) MOTION FOR RELIEF FROM  
12 ) AUTOMATIC STAY; ABANDONMENT OF  
13 ) PROPERTY OF THE ESTATE; WAIVER  
14 ) OF FRBP 4001(a)(3) AND NOTICE  
15 ) THEREOF  
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25 )

Comes now the Chelan Douglas Regional Port Authority, formerly the Port of Douglas County (the "Port"), former landlord of Debtor herein, by and through its attorney, William L. Hames of Hames, Anderson, Whitlow, & O'Leary P.S., and moves the above entitled court for an order granting relief from the automatic stay; abandonment of the below-described property of the estate; and an order waiving FRBP 4001(a)(3). This motion is based on 11 U.S.C. § 362(b)(10) in that the non-residential real property lease between the Port, as Lessor, and Debtor, as Lessee, was not assumed pursuant to 11 USC § 365.

FACTS

The Port respectfully represents that the Debtor and Port entered a non-residential real property lease (Pangborn lease) pre-petition, in which the Port leased non-residential real estate at Pangborn Memorial Airport in East Wenatchee,

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1 Washington to Debtor. (Exhibit A to Jim Kuntz Declaration). Pursuant to RCW  
2 53.08.085 the Lessee/Debtor was required to post a surety Bond with the Port District  
3 to assure the Port will be paid in the event of Lessee's default. In this case Debtor  
4 could not obtain a surety bond and posted a \$350,000.00 cash deposit in lieu of Bond.  
5 Prior to the Debtor filing bankruptcy, the Port terminated the Pangborn lease and  
6 instituted an unlawful detainer action against Giga Watt for various defaults under the  
7 Pangborn lease. (Exhibit B to Jim Kuntz declaration).

8 In response, the Debtor filed the above-captioned bankruptcy proceeding on  
9 November 19, 2018.

10 At a hearing held on January 17, 2019, the court granted the unsecured creditor  
11 committee's motion directing the US Trustee to appoint a Chapter 11 Trustee.  
12 (ECF119).

13 By *sua sponte* order, on January 18, 2019, the court extended the deadline by  
14 which to assume or reject executory contracts and unexpired real property leases to  
15 March 19, 2019 (ECF 120).

16 On January 24, 2019, the court entered an order approving the appointment of  
17 Mark Waldron as Chapter 11 Trustee (ECF 146)

18 On March 29, 2019, a notice of conditional stipulation between the Port and  
19 Mark Waldron as Trustee was entered, in which the Port granted the Debtor a 90-day  
20 extension to June 17, 2019 in which to assume to the lease. The stay was modified to  
21 permit the Port to use Debtor's surety deposit to pay certain expenses and costs  
22 (ECF 251). The order approving the stipulation was entered on April 16, 2019 (ECF  
23 276). The Port has completed the cleanup projects pursuant to the stipulation, but  
24 there is still remedial work to be completed to return the leased ground to its pre-lease  
25 condition so it may again be marketed by the Port. The contractor who performed the

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1 major ground remediation will complete the smoothing of berms created by debtor and  
2 cover the pad that was installed at the location of the projected, but never built,  
3 electrical substation, and other smaller miscellaneous remediation.

4 Debtor also had a pre-petition power supply agreement with Douglas County  
5 P.U.D. under which the P.U.D. would supply power to Debtor at a favorable rate. The  
6 agreement was terminated pre-petition. The favorable power rate would have enabled  
7 the debtor to be profitable at the Pangborn site. Without electric power at a favorable  
8 rate, a cryptocurrency mining operation will not be profitable. The Chapter 11 Trustee  
9 was unable to persuade the Douglas County P.U.D. to revive the terminated power  
10 supply agreement between the P.U.D. and Debtor. Therefore, the property cannot be  
11 successfully marketed as a cryptocurrency mining location, which means it has no  
12 value to the bankruptcy estate.

13 As a result of the failed negotiations between the P.U.D. and the Trustee, the  
14 Pangborn lease was not assumed by the Trustee prior to June 17, 2019. Pursuant to  
15 11 U.S.C. § 363 (d)(4), the lease was deemed rejected and the Trustee immediately  
16 surrendered the nonresidential property to the Port.

17 The debtor, during its occupancy of the Pangborn site, constructed  
18 improvements consisting of “pods,” small shed-like structures which contained the  
19 computers and electrical equipment. Outside the pods, the Debtor installed  
20 transformers, electrical switching equipment, breaker boxes and a significant amount of  
21 underground electrical conduit, connectors, cabling and wiring necessary to conduct a  
22 large-scale cryptocurrency mining operation. The debtor was supposed to construct an  
23 electrical substation through which the power to the pods would have been supplied.  
24 While the debtor began construction on the electrical substation, installing significant  
25 concrete footings and foundations for equipment as well as conduit, connectors, wiring

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1 and a copper grounding mat, it did not complete the electrical substation. The debtor  
2 also left personal property on the Pangborn site and on adjacent lots which were not  
3 part of the area leased by the debtor.

4 Debtor also caused damage to the Port's real estate, primarily by excavating a  
5 large hole on unleased lots, which the Port obtained an engineer's estimate of  
6 \$159,000.00 to fill and compact. The actual work that was performed turned out to be  
7 less than the original bid. Some of the personal property that was left by Debtor is  
8 affixed to the Port's real estate, some is not. The list of personal property that is also  
9 the subject of this motion is attached hereto and as Exhibit E to the Declaration of Jim  
10 Kuntz. The Port does not know the value of the personal property left on the premises.

11 The Port obtained a "Committed Private Partner Community Economic  
12 Revitalization Board" (CERB) grant/loan package to provide tenant improvements  
13 (vehicle access and basic utilities) that were requested by the debtor and constructed  
14 by the Port. The addendum to the lease agreement was negotiated and approved to  
15 incorporate cost recovery of those tenant improvements incurred by the Port on behalf  
16 of the debtor. The Port is also liable on the CERB loan.

17 The Port and the Trustee entered a subsequent stipulation amending the prior  
18 stipulation to allow the Port to spend the remaining statutory security deposit to retain a  
19 contractor to restore the land to its pre-lease status. That stipulation is dated October  
20 30, 2019 (ECF 397). The order approving the stipulation was signed November 14,  
21 2019 (ECF 417). The contractor has been trying to do the work. However, the Port has  
22 been unable to get the Trustee or Windland Credit Partners, LLC, the assignee of  
23 Neppel Electric and Controls, who claims a lien on some of the personal property,  
24 which lien is disputed by the Trustee to remove the property that is impeding the Port's  
25 contractor's work.

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The Port doesn't care who owns the personal property. However, the contractor cannot proceed until the personal property claimed by the estate and/or Windland Credit Partners is removed from the Ports premises. The equipment that is not affixed to the Port's real estate, including the pods, (non-fixture equipment) needs to be removed as soon as possible to enable the contractor to complete the restoration work. Winter has already set in in Wenatchee and it is apparent the contractor will not be able to complete the work, including reseeding the soil, until spring.

8        No rent has been paid to the Port since the end of the first stipulation in June  
9 2019. The Port is unable to use this property and now cannot even restore it because  
10 the Trustee has failed to remove the property he is claiming an interest in.

11 The Trustee/bankruptcy estate has moved and organized some of the personal  
12 property, however none of the personal property has been removed since the lease  
13 was not assumed by the June 2019 deadline. The Declaration of Jim Kuntz describes  
14 the series of events in detail.

## **RELIEF REQUESTED**

16 The Port prays that the Automatic Stay pursuant to 11 U.S.C. § 362 be  
17 terminated as to the pods erected on the Port's real property and all non-fixture  
18 personal property, which includes but is not limited to the items contained in Exhibit E  
19 attached to the declaration of Jim Kuntz., because the Pangborn lease was terminated  
20 pre-petition and was not assumed by the Trustee pursuant to 11 U.S.C. § 365.

21        The Port also prays that all the personal property of the estate and the non-  
22 fixture personal property, including, but not limited to the property described in Exhibit  
23 E attached to the declaration of Jim Kuntz, be abandoned pursuant to 11 U.S.C. § 554,  
24 because the property left on the premises is not necessary for an effective  
25 reorganization and is burdensome and of inconsequential value to the estate.

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In the alternative, the Port prays that the Trustee and/or Windland Credit Partners be given 30 days to remove all non-fixture personal property from the premises.

This motion is based upon the files and records herein, the Declaration of Jim Kuntz and pursuant to 11 U.S.C. § 362, FRBP 4001, LBR 4001.1, FRBP 6007, LBR 6007.1, and 11 U.S.C. § 554.

DATED this 29<sup>th</sup> day of January 2020.

HAMES, ANDERSON, WHITLOW & O'LEARY, P.S.  
Attorneys for Chelan Douglas Regional Port  
Authority, formerly the Port of Douglas County

By: /s/ William L. Hames  
WILLIAM L. HAMES, WSBA #12193

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